



August 26, 2002

Ms. Leona Clay
Administrative Assistant
City of Harker Heights
305 Miller's Crossing
Harker Heights, Texas 76548

OR2002-4751

Dear Ms. Clay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167630.

The Harker Heights Police Department (the "department") received a request for report number 20-01557 and any other reports filed by or against Travis Leighton McLeod and/or Diane McLeod. You state you have released some of the responsive information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You argue that report number 20-01557 is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the requested report relates to a case that has not yet concluded and argue that release of the requested information would interfere with the detection, investigation or prosecution of crime. However, the report on its face states that it is for information only, that no action is needed, and that the case is administratively closed. Because you have provided this office with conflicting information,

you have not demonstrated the applicability of section 552.108. Therefore, the department may not withhold any of the submitted information under section 552.108(a)(1).

We note, however, that report number 20-01557 contains a social security number that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).¹ See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that the social security number in the responsive records is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We note that you have also submitted report number 13241-95 for our review. However, you do not raise any exceptions to the disclosure of this report. Nor are we aware of any law that would make this report confidential. Therefore, we are unable to conclude that report number 13241-95 may be withheld from disclosure.

To summarize, (1) prior to releasing the social security number in report number 20-01557, you should ensure that it was not obtained or is maintained by the department pursuant to a provision of law enacted on or after October 1, 1990; and (2) the remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 167630

Enc: Submitted documents

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(w/o enclosures)